

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

HODGIN-BREMER V. BREMER

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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BRENDA HODGIN-BREMER, APPELLANT,
V.
JAMES BREMER, APPELLEE.

Filed September 25, 2012. No. A-12-106.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge.
Affirmed.

Christopher Perrone, of Perrone Law, and Ryan D. Caldwell, of Caldwell Law, L.L.C.,
for appellant.

Mark J. Milone and Anthony W. Liakos, of Govier & Milone, L.L.P., for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Brenda Hodgin-Bremer appeals from a decree of dissolution of marriage issued by the district court for Sarpy County on April 25, 2011. She sets out several assignments of error related to the distribution of property and the child support her former husband, James Bremer, was ordered to pay. For the reasons that follow, we affirm the decision of the district court.

BACKGROUND

Brenda filed a complaint for dissolution of marriage in the district court for Sarpy County on February 28, 2008. In her complaint, she requested she be awarded the temporary and permanent care, custody, and control of the three minor children of the parties. Brenda requested James be ordered to pay a reasonable amount of temporary and permanent child support. On the same day, Brenda filed a motion for temporary allowances, requesting temporary custody of the minor children and temporary child support. James filed an answer and countercomplaint on

April 14. The answer requested that he be awarded custody of the two younger children, that Brenda be awarded physical custody of the oldest child, and that the parties be granted shared legal custody of the oldest child. James also requested that Brenda be ordered to pay child support.

A temporary order was entered on June 2, 2008, awarding the parties joint custody of the two younger children. At that time, the oldest child was under the jurisdiction of the separate juvenile court of Sarpy County, and as such, no order regarding his custody was entered. The trial court ordered that neither party should pay child support to the other party. Brenda filed additional requests for temporary child support, which were denied.

Trial was held on May 8, 2009; September 9 and December 16, 2009; and September 22, 2010. Both parties presented evidence regarding the marital estate and their respective incomes. Custody was not an issue, because the parties had reached an agreement on the first day of trial. The decree of dissolution was entered on April 25, 2011. The trial court ordered James to pay child support to Brenda commencing April 1, 2011, in the sum of \$740 per month for two children and \$520.26 per month for one child. The trial court also ordered Brenda to maintain health insurance coverage for the children and established the amount of expenses not covered by insurance that should be paid by James.

The trial court awarded Brenda the marital residence, valued at \$200,000. The trial court awarded James three Edward Jones investment accounts, as well as his Nebraska Public Employees Retirement Systems plan. The court divided Brenda's Thrift Savings Plan and Federal Employees Retirement System plan, and the court ordered the accounts to be valued as of the date Brenda filed the complaint for dissolution. The trial court awarded the parties the household goods and personal property in their respective possession, with the exception of a few items awarded to James which were still in Brenda's possession.

Brenda filed a notice of appeal on May 11, 2011. James filed a motion for summary remand on October 12. This court sustained James' motion for summary remand on November 28. This court issued a mandate, filed in the district court on January 9, 2012, directing the court to complete, attach, and incorporate by reference the applicable child support worksheets upon which the court's determination of child support obligation is based. This worksheet was filed in the district court on January 10. Brenda filed her notice of appeal in this case on February 9.

ASSIGNMENTS OF ERROR

Brenda claims the district court abused its discretion by (1) failing to place a value on several items of personal property when determining the division of the marital estate; (2) valuing the marital residence at \$200,000; (3) failing to adequately calculate and award temporary, permanent, and retroactive child support; (4) failing to order James to contribute to the children's uncovered medical expenses incurred during the pendency of the action; and (5) failing to order James to contribute to school and activity expenses for the children during the pendency of the action.

STANDARD OF REVIEW

An appellate court reviews a trial court's determination as to child support and property division de novo on the record, and this determination is initially entrusted to the discretion of

the trial court and will normally be affirmed absent an abuse of discretion. See *Thompson v. Thompson*, 18 Neb. App. 363, 782 N.W.2d 607 (2010).

A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrains from acting, and the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system. *Wild v. Wild*, 15 Neb. App. 717, 737 N.W.2d 882 (2007).

ANALYSIS

Valuation of Personal Property.

The general rule for division of property is to award a spouse one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case. *Gress v. Gress*, 271 Neb. 122, 710 N.W.2d 318 (2006).

Brenda asserts the court placed no specific value on some personal property; therefore, it is impossible to determine if the court divided the marital estate equitably. These items included retirement accounts; video equipment; guns; a custom mantel; a stereo; a dining table; camping, fishing, and archery equipment; and power tools.

Though the court did not provide specific values in the decree, there is no evidence the court abused its discretion. Brenda admitted she had “no clue” as to the value of some of the personal property at trial. She also failed to provide evidence regarding the values of the items in question. There is not sufficient evidence to demonstrate that the court strayed from the general one-third to one-half guideline set forth in *Gress*. We find that the court did not abuse its discretion in determining the distribution of personal property in the marital estate.

Valuation of Marital Home.

Next, Brenda asserts that the court abused its discretion by valuing the marital residence at \$200,000 without providing reasoning for the valuation. Brenda estimated at trial that the home was worth approximately \$179,000, and James estimated the home was worth approximately \$204,000.

An owner of real estate is entitled to express their opinion as to the value of the real estate. *Thompson, supra*. We have held that it is not error for a trial court to place a value on real property that is between the high and low figures presented by the parties. See, *Shald v. Shald*, 216 Neb. 897, 346 N.W.2d 406 (1984); *Anania v. Anania*, 6 Neb. App. 572, 576 N.W.2d 830 (1998). We find that the trial court did not abuse its discretion in the valuation of the marital home.

Child Support.

Brenda asserts several errors with regard to child support. She requested temporary, permanent, and retroactive child support. She was not awarded temporary child support or retroactive child support, but she was awarded in the decree permanent child support for the two younger children.

A trial court’s determination of child support in a dissolution of marriage action is reviewed de novo on the record to determine whether there has been an abuse of discretion. *Klimek v. Klimek*, 18 Neb. App. 82, 775 N.W.2d 444 (2009).

A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrains from acting, and the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system. *Wild v. Wild*, 15 Neb. App. 717, 737 N.W.2d 882 (2007).

Neb. Rev. Stat. § 42-357 (Reissue 2008) provides that a court *may* order either party to pay a sum of money for the temporary support and maintenance of the other party and minor children, though it is not a requirement.

In this case, the parties were awarded joint custody of the two younger children in the temporary order entered June 2, 2008, and the court did not order child support to be paid by either party. Though Brenda requested temporary child support multiple times, she shared custody of the children, and the court found that she was not entitled to child support at that time. It is within the court's discretion whether to award temporary child support, and it did not err in refusing to do so.

Brenda also requested child support retroactive to the date she and James separated. Whether a child support order should be retroactive is a matter entrusted to the discretion of the trial court and will be affirmed on appeal absent an abuse of discretion. *Wilkins v. Wilkins*, 269 Neb. 937, 697 N.W.2d 280 (2005).

During the pendency of the proceedings, the parties shared custody of the two younger children. It was not an abuse for the court to not award retroactive child support for the children during the pendency of the case given the joint custody arrangement during that time. The oldest child was under the jurisdiction of the separate juvenile court of Sarpy County during the pendency of this case. He reached the age of 19 in July 2009, and the decree was not filed until April 2011. There is no evidence that at any point prior to turning 19 that he was released from the jurisdiction of the juvenile court. It was not an abuse of discretion to not award retroactive child support to Brenda for the oldest child's care.

Expenses for Children.

As stated above, a judicial abuse of discretion exists when a judge elects to act or refrains from acting, and the selected opinion results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result. *Wild, supra*.

Brenda asserts that the trial court abused its discretion when it failed to order James to contribute to medical expenses not covered by insurance, specifically orthodontic bills. She also requested compensation for school and activity expenses for the children during the pendency of the case. Brenda acknowledged in her brief that the school and activity expenses are not contributions required by the Nebraska Child Support Guidelines, but in equity it should have been ordered, and she asserts failure to do so denied her a just result.

At trial, James testified that he provided direct financial support for the two younger children by paying for clothes and shoes as well as providing for them during his time with the children. He also paid for entry fees to the Cornhusker State Games and archery tournaments, and he paid for basketball expenses. Given this evidence, it was not an abuse of discretion for the court to deny a request for school and activity expenses.

With regard to the medical expenses not covered by insurance, James testified that Brenda did not provide him with documents or notes detailing expenses paid for on behalf of the children, including medical and orthodontic expenses. Brenda also stated at trial that she had not made a demand for any of the expenses incurred during the pendency of this matter, nor could she produce documents at trial detailing the expenses not covered by insurance. It was not an abuse of discretion for the trial court to refrain from ordering James to contribute to medical expenses not covered by insurance during the pendency of the case, where Brenda made no request for such contribution and failed to produce evidence of such expenses.

CONCLUSION

We find that the trial court did not err in the distribution and valuation of marital property. We also find that the trial court did not err when it ordered James to pay Brenda permanent child support, but not temporary or retroactive child support, or additional payments for the children's school and activity expenses.

AFFIRMED.